

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff,

v.

V. TREVINO,

Defendant.

No. 1:21-cv-00104-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
MOTION TO PROCEED *IN FORMA*
PAUPERIS

(Doc. Nos. 2, 5)

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 28, 2021, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's application to proceed *in forma pauperis* (Doc. No. 2) be denied because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 5) (citing *Andrews v. Cervantes*, 493 F.3d 1047, 1053–55 (9th Cir. 2007)). The magistrate judge also recommended that plaintiff be ordered to pay the required \$402.00 filing fee in full in order to proceed with this action. (*Id.* at 3.) The findings and recommendations were served on plaintiff and contained notice that objections thereto were to be

1 filed within fourteen (14) days after service. (*Id.* at 3.) After receiving several extensions of time
2 in which to do so (*see* Doc. Nos. 9, 13, 17), plaintiff timely filed objections to the pending
3 findings and recommendations on April 5, 2021. (Doc. No. 18.)

4 Although plaintiff does not contest that he has accumulated at least three prior strike
5 dismissals, enough to be barred by the “three strikes” provision, he contends that he qualifies for
6 the exception under the provision for prisoners who face “imminent danger of serious physical
7 injury.” *See* 28 U.S.C. § 1915(g). In his objections, plaintiff vaguely references incidents that
8 allegedly occurred in August 2016 and April 2020 through November 2020, but he does not
9 articulate any allegations from which the court could conclude that he was in imminent danger of
10 serious physical injury at the time he filed his complaint in this action. (Doc. No. 18.) Plaintiff’s
11 objections do not address the magistrate judge’s finding that he “failed to allege that he was in
12 any imminent danger of serious physical injury at the time the complaint was filed.” (Doc. No. 5
13 at 3.) Accordingly, plaintiff’s objections provide no basis upon which to reject the pending
14 findings and recommendations.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
16 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff’s
17 objections, the court concludes that the magistrate judge’s findings and recommendations are
18 supported by the record and proper analysis.

19 Accordingly,

- 20 1. The findings and recommendations issued on January 28, 2021 (Doc. No. 5) are
21 adopted;
- 22 2. Plaintiff’s motion to proceed *in forma pauperis* (Doc. No. 2) is denied;
- 23 3. Within thirty (30) days from the date of service of this order, plaintiff shall pay the
24 \$402.00 filing fee in full in order to proceed with this action;

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4. Plaintiff is forewarned that failure to pay the filing fee within the specified time will result in the dismissal of this action; and

5. This matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: **April 12, 2021**

Dale A. Inge
UNITED STATES DISTRICT JUDGE